

Exhibit A

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**PURPLE INNOVATION, LLC, A
Delaware limited liability company,**

Plaintiff,

v.

**HONEST REVIEWS, LLC, a Florida
Corporation, RYAN MONAHAN, an
individual, and GHOSTBED, a
Delaware corporation,**

Defendants.

**DECLARATION OF SAM BERNARDS
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

Case No.: 2:17-cv-00138-PMW

Magistrate Judge Paul M. Warner

I, Sam Bernards, hereby declare as follows:

1. I am over 21 years of age and have personal knowledge of the facts set forth in this Declaration. If asked to testify, I could and would testify as to the matters set forth below.

2. I am the Chief Executive Officer of Purple Innovation, LLC ("Purple"). I have been with Purple since September 2016.

3. My duties include overseeing development and manufacturing of Purple's products.

4. Purple is an innovative and successful company located and operating in Utah focused upon bringing technologically advanced comfort products and related products to the market to resolve and alleviate pain experienced by individuals while lying in bed or sitting.

5. Since the launch of Purple's first mattress product, the Purple® Bed, Purple has grown from having fewer than 50 employees in January 2016 to over 550 employees in February 2017, all of whom are located in the State of Utah and most of whom are involved in the manufacturing of Purple's products.

6. Purple has expanded its business beyond the Purple® Bed, and we now provide a variety of innovative, quality products related to the mattress and sleep market, including the Purple® Pillow.

7. Purple was founded by brothers Tony and Terry Pearce, and they both are engineers.

8. The seeds of the business were planted in 1989, when the Pearce brothers decided to apply their engineering skills to develop innovative products that would improve people's quality of life.

9. Purple's mattress and pillow products are manufactured in Utah using Hyper-Elastic Polymer™, which is molded into a shape that relaxes under pressure points, redistributing the pressure to other areas.

10. Purple utilizes its patented machine, called Mattress Max™, to manufacture Hyper-Elastic Polymer™ in sizes large enough to fully cover a king-sized mattress, and at production rates and costs that allow the products to be sold affordably online.

11. Purple has made innovations and improvements to its products over time, including discovering a proprietary use of a non-toxic, anti-tack powder made from plastic of a family of plastics that is used for food containers and children's toys, and has been allowed by the FDA for use in surgical implants. The plastic powder used by Purple sticks to the Hyper-Elastic Polymer™ and prevents the mattresses and pillows from sticking to themselves when they are compressed for shipping. Purple is currently seeking patent protection for use of the anti-tack powder in this manner.

12. Purple has a number of cushioning-related patents and pending patent applications.

13. Purple would not sell product to consumers if we had any reason to believe our products were unsafe.

14. Beginning in 2016, Purple embarked upon an e-commerce marketing and sales strategy designed to get its products quickly into the hands of consumers at competitive prices.

15. Purple has successfully focused its efforts upon the "Bed in a Box" ("BIB") mattress market segment. Purple does not have brick and mortar stores but instead sells its bedding products through an e-commerce platform.

16. Purple's competitors in the BIB market include GhostBed, Inc. ("GhostBed"), Casper, Leesa, and Tuft & Needle, among others.
17. Purple passes along to its customers the cost savings it achieves through its vertical integration strategy of innovation, manufacturing and marketing.
18. Purple delivers mattresses to consumers for a risk free trial. Purple currently offers consumers 100 days to try out the Purple® Bed, and it provides a full refund if the customer is not satisfied.
19. The BIB segment is a fast-growing part of the mattress industry, with revenues estimated to be over one billion dollars.
20. The BIB segment is disrupting the mattress industry and experiencing a remarkable period of growth. For example, Google reports through its system for capturing trends that mattress internet search volume has doubled since 2012.
21. Capturing market share during a period of rapid expansion and growth is critical for Purple's success.
22. Although Purple did not launch its mass production and major marketing campaign until January 2016, Purple has become one of the four leading BIB companies out of over 100 such companies, experiencing exponential and rapid growth.
23. Purple places a high value on the safety, reliability, and quality of its products. Purple has invested millions of dollars into research and development and our manufacturing processes. Its mattresses have passed all governmental safety requirements, enabling Purple to deliver on the promise of providing a superior sleep experience.

24. Purple's positive goodwill and reputation in the marketplace have been critical to its rapid growth and success, and Purple has worked hard and made substantial expenditures to develop these qualities, including our unique, effective, and innovative marketing and the development of our online presence.

25. Purple's website has drawn millions of visitors, and its marketing videos have been viewed by tens of millions of viewers.

26. Purple has received positive reviews from thousands of customers who have benefitted from Purple's products.

27. Because Purple relies heavily on an e-commerce sales strategy, online comments and reviews are significant to our business.

28. Purple welcomes and appreciates the intense customer and reviewer scrutiny of its products on the internet, including factually accurate negative reviews, which can provide valuable input that Purple can use to improve its products and business. However, because of our extensive e-commerce platform, reviews that are false or likely to mislead consumers can have a drastic impact on our reputation and sales.

29. Purple recently became aware of a new mattress review website, "honestmattressreviews.com" (the "Blog"), which purportedly is owned by Honest Reviews, LLC ("HMR").

30. Starting in January 2017, Purple discovered that the Blog had begun posting false and seriously misleading information regarding Purple and its products, including multiple posts calling into question the safety of the Purple® Bed products,

including the proprietary anti-tack powder, and the honesty and integrity of our business.

31. After investigating further, we discovered that five separate articles containing false and misleading information and innuendo have been posted on the Blog. We also learned that these articles can be found through simple internet searches and that they have been reposted to social media sites like Facebook and Twitter.

32. In an attempt to respond to the false, misleading, and confusing statements on the Blog and elsewhere, we have posted extensive, truthful information about our proprietary powder on the Purple website, which can be accessed at <https://onpurple.com/blog/non-toxic-plastic-powder>.

33. Among other things, we explain that the purpose of the powder is to prevent Purple's Hyper-Elastic Polymer™ from sticking to itself, that it is non-toxic and chemically inactive plastic, and that it is from a family of plastics used for food containers and children's toys. Purple is unaware of any information or evidence showing that its products which have the anti-tack powder are in any way unsafe or dangerous to consumers using those products as intended.

34. Purple attempts to continually improve its processes to use the appropriate amount of powder on its products for shipping to consumers. Both mattress and pillow products having this powder have covers over the powdered Hyper-Elastic Polymer™ when shipped to consumers as finished products, and these products are

typically used by consumers with a mattress protector and/or sheet (bed only) or a pillow case.

35. Apart from the obviously edited clips of telephone calls posted on the Blog, which purport to be calls to Purple from HMR representatives (who do not identify themselves as such, or the fact that the conversations are being recorded), we are unaware of any efforts by GhostBed, HMR, or Monahan to contact Purple about the safety of its products or the anti-tack powder, and we are unaware of any Purple representatives who have refused to provide pertinent, non-confidential information.

36. Because Purple discovered the innovative anti-tack powder itself, the exact identification of the powder is currently proprietary, and we have applied for patent protection related to our use of the powder.

37. Purple just recently discovered and believes that Kyle Monahan was previously employed by Purple's competitor, GhostBed, as its Chief Brand Officer.

38. GhostBed is third on the long list of mattress companies on the "Reviews" page of the Blog, near Tempur Sealy so as to associate itself with the leading mattress company, both receiving a "world-class" rating, and Purple is the only company having a "poor" rating represented by a red circle with an "X" in it.

39. Purple is informed and believes that, in mid-2016, GhostBed's CEO's daughter, or some relation, posted a review of the Purple® Bed on Amazon.com under a false name, which referenced the "powder," a baby, "Johnson and Johnson," "cancer," and "safety."

40. Since HMR began publishing the “Articles” and the “PSA” on the Blog, Purple has already been experiencing harm to its reputation. A number of consumers have recently indicated confusion regarding Purple and the safety of its products as a result of the false information being spread around the internet.

41. For example, consumers have recently begun posting a variety of comments addressing these issues on Purple’s Facebook page, including the following:

“Hey purple! Im loving all the reviews and hope to purchase a mattress by mid march, however I have heard something about a white powder inside thay can be toxic? Would like to hear some more information before I make a desecison.”

“Lol, is this the answer to the white powder problem? ‘Just cover it up’ So American lol”

“Yes Wil Moore but you generally don't eat plastic and you certainly do not breath it ... if you did it would be very bad. The stomachs acids could dissolve plastic but the lungs are much more delicate. Cody, dawn dish soap may not list the Ingredients but you can look them up. From what I have read purple refuses to disclose what the white powder is made of and that is the issue I have.”

“What's the white powder I keep hearing about?”

“We tried purple and ended up going with a ghostbed. The last 3 weeks have been amazing! I'm a stomach sleeper myself. Purple didn't cut it. I also have lung disease and there's a powdery substance used on the purple bed that made difficult to breathe.”

“Heard lawsuits are coming in due to toxic chemicals being in the mattress”

“So reading that creates more questions for me. It may be considered food grade, non-toxic, and safer than a fork, but it's a plastic powder? Inhalation seems like it could be problematic. I don't like eating with plastic forks because they still have toxins regardless how safe they're deemed. I most

certainly want to inhale anything considered any kind of plastic.

So is this powder contained within the protective cover? Will it create a cloud of powder every time I go to bed for me to inhale? I've been watching you grow with curiosity and interest, and I need a new bed, but this may be a deal breaker."

"Is there a powder residue as claimed in another post I saw? Is it talc powder? Also if I buy the king electric base can I attach headboard to the base?"

"Ok so heard something about this white powder in the mattress giving asthma people problems can anyone speak to that?"

"I just read an article that talked about how these mattresses produce a white powder or dust that is inhaled by the sleeper... even some of your retailers are now speaking against this bed for that same reason."

42. Purple also has just discovered that HMR now is paying advertising fees to push its false and misleading Blog posts about Purple to Purple's potential customers. In fact, it appears it is paying more to promote the anti-Purple posts than for any other post based on the fact that the usual number of comments is around 10, and for the sponsored posts about Purple there are over 100 comments. An example of a true and correct copy of what is found on the internet is set forth on the next page:



Paul Dell This is suspiciously being promoted on Facebook. Who is bankrolling this promotion? What is the profit motive?

Like · Reply · 11 · February 11 at 5:35pm



Honest Mattress Reviews We boost all of our content; daily. Minimal income from google adsense

Like · Reply · February 11 at 5:41pm



Paul Dell Okay, then why don't you spend some of that money on doing some simple tests on this powder? Or is exploiting the fear it's mystery status creates more important?

Like · Reply · 2 · February 11 at 5:43pm



Honest Mattress Reviews **Paul Dell** It's the responsibility of the company to conduct tests. Most tests will quickly identify the substance. What our concern is the long term affects with this intended use. That could take years to test.

Like · Reply · 1 · February 11 at 5:46pm



Paul Dell Uhm, as a chemist I can tell you that it would take a very minimal amount of time and effort to discover the identity of this substance. Plus long term safety information is already available for most substances commonly used in manufacturing. Ever hea... [See More](#)

Like · Reply · 6 · February 11 at 5:50pm



Honest Mattress Reviews **Paul Dell** please share the MSDS with us. We will publish them immediately. And, as a chemist, you should be familiar with intended use

Like · Reply · February 11 at 5:59pm · Edited



Kay Good So if you are only getting minimal income from Google Ad sense, how are you affording to boost all of your content on Facebook daily? That's not cheap.

Like · Reply · 3 · February 11 at 6:06pm · Edited



Honest Mattress Reviews **Kay Good** facebook is the most cost effective means of content distribution on the planet

Like · Reply · February 11 at 6:07pm



Kay Good Yes, I have bought Facebook advertisements before and I don't understand how you could be paying to boost all of your content just based on "minimal income" from banner ads. Also, I worked for a media company before and it was certainly not policy to boost all content. Something about this is very fishy.

Like · Reply · 1 · February 11 at 6:12pm · Edited



Honest Mattress Reviews **Kay Good** as you know, google pays based on quality of traffic and click thru rates. So what we make we invest back to reach a greater audience. If you worked for a media company that didn't boost posts for clients you were doing them a disservice based on organic reach.

Like · Reply · 1 · February 11 at 6:14pm

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43. Upon information and belief, Monahan maintains an office at or still does work for GhostBed and can be reached by calling the number posted on GhostBed's website.

44. Because Purple relies heavily upon an e-commerce platform for selling its bedding products to its customers, its online reputation and goodwill are of critical importance to its success.

45. The false and misleading information being spread on the internet threatens ample harm to Purple, including Purple's growth rate, causing harm to our goodwill, loss of market share, the loss of sales diverted to our competitors, and harm to our ability to attract employees and obtain capital.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27 day of February, 2017.



Sam Bernards